

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

CR 02-103-RE  
CV 06-14-RE

Plaintiff,

ORDER

v.

JASON FRANCISCO PORTER,

Defendant.

KARIN J. IMMERMUTH  
United States Attorney  
PAMELA R. HOLSINGER  
Assistant United States Attorney  
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Attorneys for Plaintiff

1 - ORDER

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Attorney for Defendant

REDDEN, Judge.

The matter before the court is defendant's petition under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence (doc. 1, doc. 46).

The court has jurisdiction of this petition for collateral review of petitioner's sentence under 28 U.S.C. § 2255.

On February 6, 2003, defendant pled guilty to an indictment charging conspiracy to distribute ecstasy in count 1 and possession with intent to distribute ecstasy in count 2. On May 8, 2003, the court sentenced defendant to concurrent terms of 108 months imprisonment (the low end of the sentencing guidelines). Defendant did not appeal the sentence, and his conviction became final on May 26, 2003.

Petitioner now asserts his sentence is unconstitutional in light of United States v. Booker, 125 S. Ct. 738 (2005) because he was sentenced under mandatory sentencing guidelines. He argues the court would have imposed a lesser sentence if the guidelines had been advisory.

Booker does not apply retroactively to cases on collateral review where the conviction was final as of the date of Booker's publication. U.S. v. Cruz, 423 F.3d 1119, 1121 (9th Cir. 2005). Booker was published on January 12, 2005. Defendant's conviction was final long before that date.

The court, therefore, **DENIES** defendant's petition to vacate, set aside, or correct sentence (#1 and #46).

IT IS SO ORDERED.

DATED this 18<sup>th</sup> day of April, 2006.

/s/ James A. Redden  
James A. Redden  
United States Senior District Judge